

INDUSTRY CIRCULAR

OFFICE OF THE COMMISSIONER OF INTERNAL REVENUE
ALCOHOL AND TOBACCO TAX DIVISION



WASHINGTON, D. C. 20224

Industry Circular No. 68-3

January 29, 1968

REGULATIONS COVERING THE LABELING OF DOMESTIC WHISKIES AND NEUTRAL SPIRITS

Proprietors of Distilled Spirits Plants,
Importers and Wholesalers of Distilled
Spirits, Cooperage Industry, and others
concerned:

This circular is issued to provide you with a reprint of Treasury Decision 6945 which was published in the Federal Register for January 26, 1968.

The new regulations stem from the public hearing held September 18 through 22, 1967. In general, the Treasury decision (1) establishes a new standard of identity for a domestic whisky, to be known as "light whisky," distilled at high proofs, matured in used or uncharred new oak containers, and bearing a conventional age statement; (2) permits any mixture of straight whiskies, not less than four years old, of the same type produced by the same distiller at the same distillery to be designated merely as "straight whisky;" (3) establishes a new type designation, "grain spirits," applicable to neutral spirits which have been stored in oak containers, with the privilege of stating on the label the period of such storage; and (4) clarifies the regulatory provisions relating to the treating of spirits during the maturing process by the addition of materials to the oak containers. No change is made in existing regulations relating to "bourbon," "rye" or "straight" whiskies.

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(T.D. 6945)

PART 5--LABELING AND ADVERTISING OF DISTILLED SPIRITS

Amendments Relating to the Standards of Identity for Neutral Spirits and Domestic Whiskies.

DEPARTMENT OF THE TREASURY
Office of Commissioner of Internal Revenue
Washington, D. C. 20224

TO OFFICERS AND EMPLOYEES OF
THE INTERNAL REVENUE SERVICE
AND OTHERS CONCERNED:

Notice of public hearing to be held in Washington, D. C., beginning on September 18, 1967, with respect to certain petitions to amend 27 CFR Part 5, Labeling and Advertising of Distilled Spirits, was published in the Federal

Register on July 11, 1967 (32 F.R. 10208). At the conclusion of the hearing and after a thorough study of matters relevant to the issues, including evidence submitted by interested parties at this hearing and the hearing held in April 1966, the following conclusions have been reached:

1. Proposals.--A group of proposals (subjects 2 through 6 in the Notice) considered at the hearing were aimed at eliminating the present restrictions relating to proof of distillation, entry proof, and cooperage required with respect to bourbon, rye, and other traditional American type whiskies, including "straight" whiskies.

Findings.--The relative presence of flavoring materials which characterize whisky is normally determined by the proof of distillation of the spirits. As distillation proof rises, flavoring materials decrease until a point is reached at which the spirits no longer possess whisky characteristics (190° proof). The typical American whiskies, bourbon, rye, etc., and the "straight", possess characteristics which distinguish them from other type whiskies. Two principal factors contribute to the development of such characteristics: (a) the distillation of the whisky at lower proofs (not exceeding 160°) resulting in pronounced natural flavoring components in the raw distillate; and (b) the maturing, except in the case of corn whiskies, of such distillates in charred new oak containers so as to cure the whiskies and enhance their palatability.

No evidence was submitted that other proofs of distillation than 190° and 160° would more accurately distinguish whiskies from neutral spirits or American type whiskies from other whiskies even were it conceded that those distinctions are not infallible under sophisticated distilling processes.

No significant evidence was submitted to establish that a change should be made with respect to the American type whiskies in the present limitation on entry proof prescribed in 1962 after experimentation, research, and public hearing. At that time it was concluded that entry at higher proofs would substantially affect the character of the whisky. These types of whiskies are generally being produced well within the present regulatory limits for distillation and entry proofs.

Storage in charred new oak wood is necessary in order (a) to supply some of the raw materials for the chemical reactions needed to develop the distinguishing characteristics of the whiskies and (b) to act as a catalyst in speeding up chemical reactions vital to the maturing process. The additional materials in the char aid in the removal or alteration of the undesirable flavoring components which result from the low distillation proof and assist in the development of desirable characteristics.

Since charred new oak wood is necessary to properly mature these types of whiskies distilled not in excess of 160° proof, the consumer should be advised if such whiskies (other than the corn whiskies) are not so stored. Reused cooperage does not provide the char and proper balance of wood extractives to mature and develop such whiskies in the traditional manner. The present regulatory requirements provide the consumer with this information by requiring that if such whiskies are stored in reused cooperage they bear, as a part of their designation, "Distilled from rye (or bourbon, wheat, etc.) mash", if distilled from a predominant mash, and the statement, "stored _____ (years and/or months) in reused cooperage", in lieu of the statement "* * * is _____ (years and/or months) old".

The removal of the present regulatory restrictions referred to would facilitate the production of whiskies to be marketed as bourbon, rye, etc., or "straight" whisky which generally lack the distinguishing characteristics of such whiskies, and this would not be in the interests of the consumer. Further, the Congress has recognized the distinctive character of bourbon whisky as unlike other types of beverages, whether foreign or domestic.

Conclusion.--All proposals for amendments in the regulations with respect to domestic whiskies distilled at 160° proof or less are rejected. The evidence presented did not establish that the requested changes in the standards for distinctive American types of whiskies are in the public interest within the legislative standards for these regulations.

Any claim that the present regulations favor imported products is inapplicable to these types of whiskies. Bourbon whisky can only be produced in the United States and the other types of whiskies distinctive of this country, i.e., rye, corn, "straight", if produced abroad and imported must be labeled so as to show their foreign origin and must comply with the American standards.

2. Proposal.--One of the petitions considered at the hearing proposed (subject 1 in the Notice) to add a new standard of identity for a whisky which has been distilled at more than 160° proof but at less than 190° proof, aged in oak barrels seasoned by prior use, and to permit such whisky to bear a conventional age statement.

Findings.--Several studies proved conclusively that whiskies distilled at more than 160° proof mature satisfactorily in used cooperage. Canadian, Scotch, and Irish whiskies are composed primarily of whisky so matured. The storage of whisky in charred new oak containers is peculiar to American types of whiskies which must be distilled at not more than 160° proof. Whisky distilled at proofs higher than 160° and less than 190° and stored in used cooperage has taste and characteristics that are unlike the taste and characteristics which distinguish the American types of whiskies.

The higher distillation proof produces a distillate containing less pronounced natural flavoring components (both desirable and undesirable ones). Thus a smaller amount of wood extractives is needed to produce a balanced, palatable whisky. Whiskies distilled at such higher proofs are matured abroad in American used charred oak containers, "small wood", sherry casks, sherry butts, or other oak containers of varying capacities. Storing of such whisky in charred new oak containers would not produce a balanced whisky since it would be overburdened with wood extractives. Consistent with the higher distillation proof, such whiskies may be properly entered for storage at proofs higher than 125°.

In view of the distinctive characteristics of this whisky, adequate consumer information requires that it bear a distinctive designation and that a standard of identity be established. The word "light" aptly describes the distinguishing character of this whisky. The featuring of the name of a state which is associated in the consumer's mind with an American type whisky would be likely to mislead the consumer into confusing this whisky with the dissimilar American type.

The present regulations with respect to whisky distilled at not exceeding 160° proof are appropriate for the traditional American types but discriminate against the domestic production of whisky distilled at high

distillation proof and stored in used cooperage. Although the latter type of whisky is properly matured in used containers, the regulations prohibit it from bearing the normal age statement and require the statement "stored _____ years in reused cooperage." This statement, although descriptive of the actual maturing process, adversely affects marketability. The appearance of a storage statement is likely to mislead the consumer into believing the product to be inferior because it was matured in used containers instead of new oak containers. In fact, the product properly matures in used containers although it is different in character than the traditional American types of whiskies. Similar foreign whiskies so matured are, however, permitted to claim age.

Conclusion.--The proposal is adopted with modifications. A standard of identity under the distinctive type designation "light whisky" should be prescribed for a domestic whisky distilled at more than 160° proof, and aged in used or uncharred new oak containers. (The opportunity to use uncharred new containers is provided since the aging effect would be comparable to that of used containers.) If "light whisky" is mixed with less than 20 percent by volume of 100° proof straight whisky, the mixture shall be designated "blended light whisky." The establishment of a type designation employing the word "light" does not preclude the use of such word as an adjective to describe other whiskies, but it shall not be used as a part of the class or type designation. The names of states which are associated in the consumer's mind with the production of the American types of whiskies shall not be permitted to be featured on the labels and in the advertising of "light whisky" or "blended light whisky."

The regulations as so amended will permit the production in this country of a whisky distilled at relatively high proof on a parity with the production of such whiskies abroad.

3. Proposal.--One petitioner proposed (subject 8 in the Notice) that a maximum limit of 53 wine gallons be imposed on the size of new white oak barrels used for the aging of domestic whiskies.

Findings.--The evidence has disclosed that barrels of varying sizes are used for the storage of whiskies in other major whisky-producing countries. Canadian regulations require that whisky be stored in "small wood," i.e., wood casks or barrels of any size not greater than approximately 180 U. S. gallon capacity. Scotch and Irish regulations are silent, but, as far as can be determined, malt and grain whiskies are aged in casks not in excess of 150 gallons. Normally the barrels used have had prior use for other purposes, e.g., as sherry butts or American whisky barrels.

The American type whisky container shows a high degree of standardization, normally approximately 53 gallons. Although size has been relatively constant, domestic containers show marked and important variations in other respects, principally degree and depth of char. The maturing process for American-type whiskies (other than corn whiskies) depends on contact between the whisky and charred new oak and thus there is a necessary relationship between the volume of whisky and the volume of wood surface area available. So far, however, there has not been sufficient experimentation to determine the point at which a barrel would become so large as to be deficient for aging purposes.

Of course, no product, regardless of the size of the barrel in which aged, can bear a type designation unless it possesses the taste, aroma, and

characteristics generally attributed to that type. The practice of adding powdered oak, or wood chips, whether large (slabs) or small in size, in order to make up for deficiencies in wood extractives resulting from excessive barrel size is limited by the regulatory requirement that where such materials are used the label state such fact.

Conclusion.--The proposal to set maximum size for whisky barrels is rejected. Although the available evidence indicates that the size of the container suitable for aging may vary with the character of the whisky to be produced, the maximum size of the oak container is effectively limited by the regulatory requirement that the product must possess the taste, aroma, and characteristics generally attributed to it. In addition, the consumer is advised by an appropriate label statement of any attempt to short cut normal aging processes through the addition of wood or wood extractives. The present regulation requiring label disclosure of the addition of wood chips should be amended to make clear that the disclosure requirement applies to the addition of any wood pieces regardless of size. Thus the selection of the size of the container suitable for maturing a product may continue to be left to the distiller.

4. Proposal.--One petitioner requested that the regulations be amended (subject 7 in the Notice) to provide that all domestically-produced whiskies must be aged a minimum of two years before bottling; a second petitioner requested a four-year minimum.

Findings.--No need was established for a minimum age requirement for current domestic types of whisky. There are no appreciable amounts of immature whiskies currently being sold. Although some whisky is being offered at less than two years of age, this is, in the main, corn whisky. In any event, the present regulations protect the consumer by requiring all whiskies less than four years old to bear a true age statement. Although Ireland, Great Britain and Canada have enacted immature spirits acts, requiring spirits to remain in storage for a specific minimum period, their laws do not require that the consumer be provided with information as to age.

Conclusion.--The proposal to establish a minimum age requirement for whiskies is rejected. It is preferable to permit the consumer an adequate basis for the selection of whiskies (even immature ones) than to limit his choice by banning them from the market. The mere desire to conform American regulations to those applicable in foreign countries is not sufficient justification for imposing the proposed limitation.

5. Proposal.--One petitioner proposed (subjects 9 and 10 in the Notice) to relax the standard for straight whisky (and the various types thereof) so as to permit blends of straight whisky of one type or of different types to be designated as straight whisky without the words "blend" or "blended" appearing in the designation.

Findings.--No evidence was submitted which would establish that the present regulations, as to the labeling of blends of straight whiskies, fail in their purpose of providing the consumer with information as to the identity of the whiskies he purchases. Nor was any evidence submitted to indicate that this information is meaningless, misunderstood or unimportant to the consumer.

In one respect, however, the present regulations burden the industry with no appreciable benefit to the consumer. Under the present regulations

two straight whiskies (unmixed) four or more years old produced at the same distillery may be offered to the consumer under identical labels even though differing in age. This being the case, there seems to be no compelling reason insofar as the consumer is concerned why they could not be mixed and offered to him under the same label. Such mixing, under the designation of straight whisky, would give the distiller a greater degree of flexibility in the area of quality control and uniformity of his individual straight whisky brands. In view of the connotation of the designation "straight" whisky as implying a product which is all whisky, the present provisions prohibiting the addition of harmless coloring, flavoring, and blending ingredients, such as caramel, should be applicable to mingled whiskies if designated as "straight" whisky.

Conclusion.--The proposal to permit a mixture of different types of straight whisky as "straight" whisky is rejected since it would deprive the consumer of important information which he is now furnished. The consumer is entitled to be advised that he is not buying a single type distillate when, for example, straight bourbon and straight rye whiskies are mixed. Although it was argued that a straight whisky can be produced through the mixture of predominant mash, prior to distillation, and that therefor similar labeling should be applied to a mixture of straight whiskies, this argument is not relevant to the appropriate designation for a mixture of whiskies.

As to requiring blends of straight whiskies of the same type to be designated as "straight" whisky, the proposal is adopted provided that the straight whiskies are produced by the same distiller at the same distillery, and are not less than four years old.

6. Proposal.--One petitioner proposed (subject 11 in the Notice) that grain neutral spirits stored in reused cooperage for not less than two years be designated as "grain spirits" and be permitted to claim age. This proposal is related to the subject matter of a hearing held in April 1966; thus, the record of the earlier hearing has been considered at this time.

Findings.--Grain neutral spirits when stored in reused cooperage undergo changes which modify the neutral character of the spirits. Such spirits possess a distinctive character which differs from that of neutral spirits which have not been so stored.

The formation of esters, acids, solids and color in the neutral spirits evidences a development of flavoring components related to the period of storage in wood. In general, the development of flavoring components is analogous to that which occurs when whisky is stored in reused cooperage. However, the flavoring components in neutral spirits are minimal and this distinguishes the maturing process from that of whisky.

Aging is a two-step process. Interaction between the distillate and the wood results first in the improvement of the original characteristics in the spirits and second in the development of additional flavoring components. The storage of neutral spirits in oak containers results only in the latter. Therefore, neutral spirits do not "age" in the fullest sense, although they do mature in some respects.

The presence of residual whisky soaked into the staves of the barrels is not necessary to the development of flavoring components in the neutral spirits although it may add to them. The neutral character of the spirits is altered when the spirits come in contact with oak containers, whether new or used.

Conclusion.--The proposal is adopted with modifications. It has been established that the neutral character of the spirits is affected when the spirits are put in oak containers and that storage in such containers develops in the spirits certain of the characteristics attributed to age.

In order to recognize the distinction between neutral spirits which have come in contact with oak wood and those which have not, a type designation, "grain spirits," is established within the class "neutral spirits." Similarly, in recognition of the fact that the storage of such spirits in oak containers results in a development of flavoring components, analogous in certain respects to that which occurs in the aging of whisky, the period of such storage may be stated on the label; for example, "* * * stored ____ (years and/or months) in oak casks." No minimum period of storage is prescribed because the neutral spirits begin to acquire their distinctive character and to develop flavoring components when placed in the oak container.

Accordingly, the following amendments to 27 CFR Part 5 are hereby adopted:

Paragraph 1. Section 5.21(a) is amended by adding at the end thereof a new subparagraph (2) reading as follows:

"(2) 'Grain spirits' are neutral spirits distilled from a fermented mash of grain stored in oak containers and bottled at not less than 80° proof."

Par. 2 Section 5.21(b) is amended:

(A) by striking out the first paragraph and inserting in lieu thereof the following:

"(b) Class 2; Whisky. 'Whisky' is an alcoholic distillate from a fermented mash of grain distilled at less than 190° proof in such manner that the distillate possesses the taste, aroma, and characteristics generally attributed to whisky, and bottled at not less than 80° proof, and also includes mixtures of the foregoing distillates for which no specific standards of identity are prescribed in this part. The types of whisky specified in subparagraphs (1) to (10) of this paragraph shall be deemed 'American type' whiskies.";

(B) by inserting in subparagraph (1) in the first sentence ", at not more than 125° proof," after "March 31, 1938, stored";

(C) by inserting in subparagraph (1) in the second sentence ", at not more than 125° proof," after "corn grain, stored";

(D) by striking out the period in the last sentence of subparagraph (2) and adding at the end thereof "and mixtures of straight whiskies of the same type produced by the same proprietor at the same distillery all of which are not less than four years old."; and

(E) by redesignating subparagraphs (11) through (13) as (12) through (14), respectively, and by inserting after subparagraph (10) the following new subparagraph:

"(11) 'Light whisky' is whisky which has been distilled in the United States at more than 160° proof, stored in used or uncharred new oak containers, and bottled at not less than 80° proof, and also includes mixtures of such

whiskies. If 'light whisky' is mixed with less than 20 percent by volume of 100° proof straight whisky, the mixture shall be designated 'blended light whisky.'"

Par. 3. Section 5.21(h) is amended by adding at the end thereof a new subparagraph (5) reading as follows:

"(5) The name of any State which the Director finds is associated by consumers with an American type whisky shall not appear in any manner on any label for light whisky, as defined in paragraph (b)(11) of this section, except as a part of the name and address of the distiller, bottler, or person bottled for, as required by sections 5.35(a) and (c)."

Par. 4. Section 5.34(d) is amended to read as follows:

"(d) In the case of whisky, including any of the types thereof, produced on or after March 31, 1938, and in the case of brandy produced on or after July 1, 1941, which, in whole or in part, is treated with wood through percolation or otherwise, during distillation, rectification, or storage (other than through contact with the oak container), there shall be stated as a part of the class and type designation the phrase 'colored and flavored with wood _____ (insert chips, slabs, etc., as appropriate)': Provided, That this paragraph shall not be construed as authorizing the treatment of any of the types of corn whisky with charred wood."

Par. 5. Section 5.34 (f) is amended by striking out in the last sentence "section 5.21(b)(11), (12) and (13)," and inserting in lieu thereof "section 5.21(b)(12), (13) and (14),".

Par. 6. Section 5.35(e) is amended by adding at the end thereof the following new sentence:

"In the case of 'light whisky', as defined in section 5.21(b)(11), the State of distillation shall not appear in any manner on any label, when the Director finds that such State is associated by consumers with an American type whisky, except as a part of a name and address as set forth in paragraph (a) of this section."

Par. 7. Section 5.38(a) is amended by striking out the period in the last sentence and adding at the end thereof"; or '____% grain spirits', as appropriate."

Par. 8. Section 5.39(a) is amended:

(A) by inserting in the first sentence of subparagraph (1) "(14)," after (13), "; and

(B) by striking out the first sentence of subparagraph (2) and inserting in lieu thereof the following "In the case of any of the types of straight whisky, if not mixed, the age of the straight whisky; if mixed, the age of the youngest straight whisky."

Par. 9. Section 5.39(c) is amended to read as follows:

"(c) Other distilled spirits. Age, maturity, or similar statements or representations as to neutral spirits (except for grain spirits as stated

below), gin, liqueurs, cordials, vodka, cocktails, gin fizzes, highballs, bitters, and specialties are misleading and are prohibited from being stated on any label. In the case of grain spirits, the period of storage in oak containers may be stated in immediate conjunction with the required percentage statement; e.g., '____% grain spirits stored ____ (years and/or months) in oak casks'."

Par. 10. Section 5.39(d) is amended by inserting in the second sentence of subparagraph (5) "(except as provided for grain spirits in paragraph (c) of this section)" after "neutral spirits".

Par. 11. Section 5.62(d) is amended by striking out the period in the last sentence of subparagraph (1) and adding at the end thereof "; or '____% grain spirits', as appropriate."

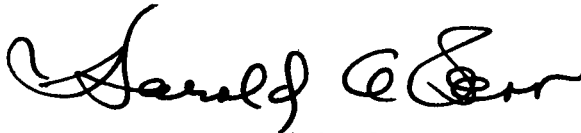
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The amendments contained in paragraphs 2D and 8B above relieve restrictions presently contained in the regulations and require very little trade adjustment. Therefore, these amendments shall become effective on the first day of the month that begins not less than 30 days after the date of publication in the Federal Register.

In the interest of equity as between members of the distilling industry, to avoid any unfair advantages or windfalls resulting from existing stocks of distilled spirits, the status of which would otherwise be affected by these regulations, and to permit the industry an opportunity to adjust their operations to the changed rules, all other amendments shall become effective July 1, 1972, but shall in no event apply to the labeling of spirits distilled before the date of publication. As to spirits distilled before the date of publication, the present regulations shall continue in effect. (This Treasury Decision is issued pursuant to and under the authority contained in 49 Stat. 981, as amended; 27 U.S.C. 205).

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Inquiries concerning this circular should refer to its number and be addressed to the Director, Alcohol and Tobacco Tax Division (Attention: CP:AT:JHL), Washington, D. C. 20224.



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